

1 Hon. Richard A. Jones  
2 Hon. J. Richard Creatura  
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10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE WESTERN DISTRICT OF WASHINGTON  
12 AT SEATTLE  
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15 EL PAPEL, LLC and BERMAN 2, LLC, )  
16 Plaintiffs, ) Civil Action No. 2:20-cv-01323-RAJ-JRC  
17 v. )  
18 ROBERT W. FERGUSON, in his official )  
19 capacity as Attorney General of the State of )  
20 Washington; JENNY A. DURKAN, in her )  
21 official capacity as the Mayor of the City of )  
22 Seattle; and THE CITY OF SEATTLE, a )  
23 municipal corporation, )  
24 Defendants. )  
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**PLAINTIFFS' FOURTH NOTICE OF  
SUPPLEMENTAL AUTHORITY IN  
SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT**

Plaintiffs wish to notify the Court of a recent ruling from the Second Circuit Court of Appeals in *Melendez v. City of New York*, No. 20-4238-cv, 2021 WL 4997666 (2d Cir. Oct. 28, 2021) which is relevant to this dispute. The opinion is attached as Exhibit 1.

With respect to whether the eviction bans cause a substantial impairment under the Contract Clause, *see id.* at \*31: “[T]he practical likelihood of landlords such as plaintiff Bochner recovering rent arrears from delinquent small business tenants appears speculative at best.” *Compare with*

1 Def. City of Seattle's Opening/Response Brief on Cross-Motions for Summ. J., Dkt. #103 at 13:  
 2 "The enactments do not absolve tenants from their obligation to pay rent."

3 With respect to whether the eviction bans are an appropriate and reasonable means of  
 4 addressing pandemic relief under the Contract Clause:

- 5 • See *Melendez* at \*38: "Here too, the City did not afford Guaranty Law relief by  
 6 appropriating existing funds or raising taxes so as to place the burden of preserving  
 7 neighborhoods on the city that would benefit therefrom. Instead, it transferred the burden  
 8 to the 'few shoulders' of commercial landlords. . . . [R]easonableness and appropriateness  
 9 concerns are raised by a legislative decision to provide financial relief to certain persons  
 10 not through public funds but by destroying the contract expectations of other persons,  
 11 particularly persons not responsible for the circumstances warranting relief." *Compare*  
 12 with Pls.' Combined Response and Reply ISO Pls.' Mot. for Summ. J., Dkt. #111 at 1:  
 13 "[T]his case is about whether Defendants can target one segment of society to carry a  
 14 disproportionate burden of the costs of [combatting the pandemic.] This they cannot do."
- 15 • See *Melendez* at \*40: "[T]he failure to condition relief on guarantor need is a further reason  
 16 why the Guaranty Law cannot be deemed reasonable and appropriate to its public purpose  
 17 as a matter of law." *Compare with* Dkt. #111 at 17: "The eviction bans are not precisely  
 18 and reasonably designed to meet the governments' objectives because their protections  
 19 extend to those tenants who are not suffering financial hardship and are not at risk of  
 20 homelessness."
- 21 • See *Melendez* at \*41: "[T]he reasonableness of the Guaranty Law as a means to serve the  
 22 City's stated public purpose is also called into question by the law's failure to provide for  
 23 landlords or their principals to be compensated for damages or losses sustained as a result  
 24 of their guaranties' impairment." *Compare with* Pls.' Mot. for Summ. J., Dkt. #93 at 15:  
 25 "The eviction bans fail to provide an enforceable requirement that tenants protected from  
 26 eviction pay anything during the interim as a condition of that protection."

1 DATED: November 3, 2021.  
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3 Respectfully submitted,

4 s/ ETHAN W. BLEVINS  
5 s/ BRIAN T. HODGES

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2                   **CERTIFICATE OF SERVICE**  
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5                   I hereby certify that on November 3, 2021, I electronically filed the foregoing with the  
6 Clerk of the Court using the CM/ECF system which will send notification of such filing to all  
7 counsel of record.  
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10                  s/ ETHAN W. BLEVINS  
11                  Ethan W. Blevins, WSBA # 48219  
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